

WASHINGTON, DC -- Congresswoman Linda Sánchez, Chairwoman of the House Judiciary Subcommittee on Commercial and Administrative Law (CAL), issued the following opening statement today at the CAL Subcommittee oversight hearing on the implementation of the U.S. Department of Justice's special counsel regulations.

"In response to the Watergate scandal and President Richard Nixon's executive dismissal of Independent Special Prosecutor Archibald Cox, the independent counsel provisions were originally enacted as Title VI of the Ethics in Government Act of 1978.

"Specifically, the special prosecutor/independent counsel provisions were adopted to deal with the unusual circumstance of an inherent conflict of interest that would arise when the Attorney General and the President, while supervising the Department of Justice and federal prosecutors, would control the investigation and possible prosecution of allegations of their own criminal wrongdoing, or other high-level officials in their Administration.

"During the nearly 21-year span of the law, 20 Independent Counsels were appointed at a cost of approximately \$230 million to the American people.

"When the independent counsel law expired, regulations were promulgated concerning the appointment of outside, temporary counsels. According to the regulations, such "Special Counsels" are to be appointed by the Attorney General to conduct investigations and possible prosecutions of certain sensitive criminal matters where the Department may have a conflict of interest and where the circumstances determine that such an appointment would be in the public interest.

"These regulations make clear that special counsels should come from outside of the government. They also provide that at the conclusion of his or her work, the special counsel must produce a confidential report explaining the prosecutions or the decision not to prosecute.

"Additionally, at the conclusion of the investigation, the Attorney General is obligated to notify the Chairmen and Ranking Minority Members of the House and Senate Judiciary Committees. This notification is essential if Congress is to fulfill its oversight duties and its Constitutional obligation to provide a check on Executive Branch actions.

"Recently these special counsel regulations have been all but ignored. Despite several opportunities to do so, Attorneys General in the Bush Administration have yet to utilize the special counsel regulations. In the CIA leak matter, U.S. Attorney Patrick Fitzgerald was given the title of "Special Counsel," but did not come from outside of government and was not required to abide by the Department's special counsel regulations. The practical implication of this arrangement was that Mr. Fitzgerald had significantly more power and less supervision than a Special Counsel under the regulations.

"Similarly, with regard to the Detainee Interrogation Videotapes investigation, Attorney General Mukasey has appointed Assistant U.S. Attorney John Durham to be the Acting U.S. Attorney for the Eastern District of Virginia. While Mr. Durham's qualifications and reputation are admirable,

as are Mr. Fitzgerald's, I remain concerned about potential conflicts of interest and a lack of procedural safeguards in place for his appointment. I am also concerned about the scope of Mr. Durham's investigation. The Attorney General has indicated that Mr. Durham will investigate the destruction of the tapes. However, he has made clear that Mr. Durham will not investigate the activities recorded on the tapes, including the use of waterboarding.

"Because of these concerns, I joined 18 of my colleagues on the Judiciary Committee in a letter to Attorney General Mukasey requesting that he appoint an outside special counsel in the videotapes case. To date, we have yet to receive a response to our request.

"I am very interested in whether the special counsel regulations are functioning properly and whether the Department should revise the regulations in light of Mr. Fitzgerald's experience. I am also interested in whether we should revisit the Independent Counsel Statute or whether we should consider a new legislative approach that strikes the proper balance of independence and accountability. Although the Subcommittee examined the expiring independent counsel statute and newly promulgated special counsel regulations in several hearings during the 106th Congress, this is the first hearing that I am aware of that the Subcommittee has conducted regarding oversight of the implementation of the special counsel regulations. Accordingly, I look forward to hearing from our witnesses."